the ordinance, it must be viewed as one intended to impose an occupation tax only. He declared it contemplated a tax upon businesses which by another ordinance were unlawful unless licensed. "An occupation tax," he said, "presupposes a lawful business which should bear a part of the expenses of municipal government, while a license tax ordinance declares the business unlawful without a license to engage therein having first been obtained." The decision of the court naturally leads us to enquire, what is the distinguishing characteristic of a license? It has been defined as the grant of a privilege conferring an authority to do something which without the grant would be illegal. The payment of the license fee to secure the privilege is made a condition precedent to the right of engaging in the particular occupation of business. COOLEY ON TAXATION, p. 596. BOUVIER defines a license as, "an authority to do some act or carry on some trade or business, in its nature lawful but prohibited by statute except with the permission of the civil authority or which would otherwise be unlawful." The imposition of the license may be made either under the taxing power for the purpose of raising revenue or under the police power as a regulation merely. COOLEY ON TAXATION, p. 59. ELLIOTT ON MUNICIPAL CORPORATIONS, 89. Generally the authority to license delegated by the legislature to a municipal corporation will be denied to be for the purpose of regulation, unless a contrary intention clearly appears. AM. & ENG. ENC. "*License*," (1st ed.) vol. xiii. p. 532, note and cases cited; COOLEY ON TAXATION, p. 597. The constitutional provision however, that all license moneys were to be appropriated exclusively to the use and support of the common schools in the respective subdivisions where the former may accrue "would indicate that license moneys were to be imposed under the taxing power, for when a license is imposed uuder the police power the fees required are for the purpose of covering the probable expense of issuing the license, inspecting and regulating the business. *Jackson* v. *Newman*, 59 Miss. 385, 42 Am. Rep. 367; *State* v. *New Brunswick*, 43 N. J. L. 175; *Vansant* v. *Harlan Stage Company*, 59 Md. 330; *Van Hook* v. *Salem*, 70 Ala. 361, 45 Am. Rep. 85; *Littlefield* v. *State*, 42 Neb. 223, 28 L. R. A. 588. A revenue must have been intended as the moneys collected were to help support the common schools, while under the exercise of the police power no moneys could have accrued. See also *Chilvers* v. *People*, 11 Mich. 43. In the absence of statutory enactments a tax is not a debt in the sense that a common law action can be brought for its recovery and therefore it does not fall within the Nebraska constitution which forbids imprisonment for a debt. *Augusta* v. *North*, 57 Me. 392, 2 Am. Rep. 55; *Hibbard* v. *Clark*, 56 N. H. 155, 22 Am. Rep. 432; *Johnson* v. *Howard*, 41 Vt. 122, 98 Am. Dec. 568; *Jack* v. *Weiennett*, 115 Ill. 105; *St. Louis* v. *Sternberg*, 69 Mo. 289; *Denver City Railroad Company* v. *City of Denver*, 21 Colo. 350, 29 L. R. A. 608, 41 Pac. 820; *Campbell* v. *Anthony*, 40 Kan. 653, 20 Pac. 492. The Nebraska courts have taken a dogmatic view of penal provisions of such ordinances as the one in question and in a series of cases have held that a tax came within the constitutional provisions mentioned above. *State* v. *Green*, 27 Neb. 64, 42 N. W. 913; *Magneau* v. *City of Fremont*, 30 Neb. 844, 9 L. R. A. 786, 49 N. W. 373; *State* v. *Atkin*, 61 Neb. 490, 85 N.W. 395. The reasoning of the court in the last case cited, is also at variance with that of the court in the present case.

MUNICIPAL CORPORATIONS—STREET RAILWAYS—POLICE POWER.—A city ordinance, passed subsequent to the chartering of defendant company, required street railway companies to pave between the rails of their roads and to keep such pavement in repair. Defendant failed to repair as required by the ordinance, and as a result of the defective condition of the pavement

plaintiff sustained an injury for which she brings this action. *Held*, that plaintiff cannot recover. *Fielders* v. *North Jersey St. Ry. Co.* (1902), — N. J. L. —, 53 Atl. Rep. 404.

After a careful examination of authorities the court concludes that the ordinance in question is not an exercise of the police power and as such, within the province of the municipality, but is an unauthorized exercise of the taxing power. It was therefore invalid, conferred no rights upon the plaintiff, and imposed no duty upon defendant. No case is cited in which the particular point here in question was decided, and it is believed that the books do not afford an exact precedent. A similar ordinance was declared unconstitutional by the United States supreme court in *Chicago* v. *Sheldon*, 9 Wall. 50, on the ground that such ordinance impaired the obligation of a contract. The company, it was said, accepted its charter on certain conditions, thereby completing a contract. To place upon it an additional burden in the shape of a requirement to do additional paving was to impair the obligation of its contract with the city. The same conclusion was reached in *Coast Line Ry. Co.* v. *Savannah*, 30 Fed. Rep. 646. These decisions involve the finding that the requirement to pave is not an exercise of the police power, since contract rights afford no immunity from legitimate police control. *R. R. Co.* v. *Bristol*, 151 U. S. 556; *New Orleans Gas Co.* v. *Louisiana Light Co.*, 115 U. S. 650. To require a street railway company to sprinkle its roadway to keep down dust is a valid exercise of the police power. *City Ry. Co.* v. *Savannah*, 77 Ga. 731. In *Cincinnati Ry. Co.* v. *Sullivan*, 32 Ohio St. 152, an ordinance requiring the company to light its track within the corporate limits was held not to be a tax but an exercise of the police power. An ordinance requiring a railroad company to construct and maintain street crossings over its road is an exercise of the police power and not a taking of private property without just compensation. *I. C. R. R. Co.* v. *Willenborg*, 117 Ill. 203, 7 N. E. R. 698, 57 Am. Rep. 862, 26 Am. & Eng. R. R. Cases, 358; *C. & N. W. Ry. Co.* v. *Chicago*, 140 Ill. 309. Because of analogy to the above, the opinion has been expressed that in the absence of all charter requirements, street railway companies are bound to keep the part of the street they occupy in repair. ELLIOTT ON STREETS AND ROADS, sec. 772 *et seq.*

NEGLIGENCE—CHILDREN—ATTRACTIVE NUISANCE.—Action for death of a child. The defendant company strung its wires outside the railings on a city bridge. Several boards of the floor of the bridge projected beyond the railing; the child climbed over this railing and was playing on the projecting boards, when it came in contact with a poorly insulated wire and was killed. *Held*, that the plaintiff may recover. *Consolidated Electric Light Co.* v. *Healy* (1903), — Kan. —, 70 Pac. Rep. 884.

The theory of attractive nuisances is carried further in this case than is usual. The court decided the wires alone were not an attractive nuisance, but that the projecting boards were, and the two constituted a dangerous whole or attractive nuisance. The courts are in conflict, but the undoubted weight of authority supports the theory of attractive nuisances. 1 MICH. LAW REV. 418.

NEGLIGENCE—LIABILITY OF AGRICULTURAL SOCIETY—SHOOTING GALLERY.—A state agricultural society was giving a fair, and had leased certain space upon its grounds for a shooting gallery. A bullet, fired by a patron of the shooting gallery, missed the target, passed through the fence enclosing the exhibition grounds, and struck and killed plaintiff's intestate. At the time, the deceased was standing upon a railroad platform outside of the